

UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF OHIO

ROBERT WALKER,	:	CASE NO. CA-21-3504
Plaintiff-Appellee,	:	Trial Court Case No. 2:20-cv-03414
v.	:	<b>JOINT MOTION FOR</b>
NAUTILUS, INC.,	:	<b>INDICATIVE RULING OF</b>
Defendant-Appellant.	:	<b>PLAINTIFF-APPELLEE ROBERT</b>
	:	<b>WALKER AND DEFENDANT-</b>
	:	<b><u>APPELLANT NAUTILUS, INC.</u></b>

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Pursuant to Fed. R. Civ. P. 62.1, Plaintiff Robert Walker ("Plaintiff") and Defendant Nautilus, Inc. ("Nautilus") jointly request an indicative ruling that this Court will evaluate a proposed settlement reached between the parties and conduct a fairness hearing regarding settlement upon limited remand from the Sixth Circuit Court of Appeals ("Sixth Circuit"). A proposed Order granting this Joint Motion is attached.

Respectfully submitted,

/s/ D. Jeffrey Ireland

D. Jeffrey Ireland (0010443)  
FARUKI PLL  
110 North Main Street  
Suite 1600  
Dayton, OH 45402  
Telephone: (937) 227-3710  
Fax: (937) 227-3717  
Email: djireland@ficlaw.com

Brian D. Wright (0075359)  
Jason W. Palmer (0088336)  
FARUKI PLL  
201 East Fifth Street  
Suite 1420  
Cincinnati, OH 45202  
Telephone: (513) 632-0314  
Fax: (513) 632-0319  
Email: bwright@ficlaw.com  
jpalmer@ficlaw.com

Attorneys for Defendant-Appellant  
Nautilus, Inc.

/s/ W.B. Markovits (per email authorization)

W.B. Markovits (0018514)  
Terence R. Coates (0085579)  
Justin C. Walker (080001)  
Zachary C. Schaengold (0090953)  
MARKOVITS, STOCK & DeMARCO, LLC  
3825 Edwards Road, Suite 650  
Cincinnati, OH 45209  
Telephone: (513) 651-3700  
Fax: (513) 665-0219  
bmarkovits@msdlegal.com  
tcoates@msdlegal.com  
jwalker@msdlegal.com  
zschaengold@msdlegal.com

Nathan D. Prosser (*pro hac vice*)  
HELLMUTH & JOHNSON, PLLC  
8050 West 78th Street  
Edina, MN 55439  
Telephone: (952) 941-4005  
Fax: (952) 941-2337  
nprosser@hjlawfirm.com

Bryan L. Bleichner (*pro hac vice*)  
Jeffrey D. Bores (*pro hac vice*)  
CHESTNUT CAMBRONNE, PA  
100 Washington Avenue South, Suite 1700  
Minneapolis, MN 55401  
Telephone: (612) 339-7300  
Fax: (612) 336-2940  
bbleichner@chestnutcambronne.com  
jbores@chestnutcambronne.com

Counsel for Plaintiff, the Class and the Subclass

**MEMORANDUM IN SUPPORT OF JOINT MOTION FOR INDICATIVE RULING OF  
PLAINTIFF-APPELLEE ROBERT WALKER ET AL. AND DEFENDANT-  
APPELLANT NAUTILUS, INC.**

Pursuant to Federal Rule of Civil Procedure 62.1, Plaintiff Robert Walker ("Plaintiff") and Nautilus, Inc. ("Nautilus" or "Defendant") (the "Parties") jointly request an indicative ruling that the Court will, upon remand from the Sixth Circuit Court of Appeals ("Sixth Circuit"), evaluate a proposed class action settlement and conduct a fairness hearing.

I. AN INDICATIVE RULING IS APPROPRIATE UNDER THE FEDERAL RULES

On September 29, 2020, Nautilus filed a motion to compel arbitration or, in the alternative to dismiss or strike Plaintiff's claims. (Doc. 13, Motion). On May 28, 2021, the Court denied Nautilus' motion, and Nautilus filed a notice of appeal. (Doc. 29, Order; Doc. 30, Notice of Appeal). While on appeal, a mediation conference was scheduled with Sixth Circuit mediator John A. Minter pursuant to Sixth Circuit Rule 33. The parties engaged in multiple arms'-length mediation conferences under the guidance and supervision of Mr. Minter, beginning on June 28, 2021 and ending on September 8, 2021, as well as in continued email exchanges and discussions, among other things, between formal mediation sessions. Nautilus' appeal is currently pending in the Sixth Circuit.

Rule 23(e) governs class action settlements and mandates that the court may approve a settlement upon holding a fairness hearing and concluding that it is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2); Gascho v. Glob. Fitness Holdings, LLC, 822 F.3d 269, 277 (6th Cir. 2016). In 2007, the Sixth Circuit set out the factors that guide the court's inquiry:

(1) the risk of fraud or collusion; (2) the complexity, expense and likely duration of the litigation; (3) the amount of discovery engaged in by the parties; (4) the likelihood of success on the merits; (5) the opinions of class counsel and class representatives; (6) the reaction of absent class members; and (7) the public interest.

Id. at 276 citing Int'l Union, United Auto., Aerospace, & Agric. Implement Workers of Am. v. Gen. Motors Corp., 497 F.3d 615, 631 (6th Cir. 2007).

Because this case is on appeal in the Sixth Circuit, this Court does not have jurisdiction to evaluate the proposed settlement and conduct a fairness hearing. However, if a timely motion is made for relief that the district court lacks authority to grant because of a pending appeal, the district court may state in an indicative ruling that it would grant the motion or that it raises a substantial issue. Federal Rule of Civil Procedure 62.1(a)(3); Wilson v. Long, No. 20-5227, 2020 U.S. App. LEXIS 37096 at 2 (6th Cir. Nov. 24, 2020). If the district court determines that it would either grant the motion or that it raises a substantial issue, the court of appeals may then remand the matter to the district court for consideration under Federal Rule of Appellate Procedure 12.1. See Universal Life Church Monastery Storehouse v. Nabors, No. 19-6217, 2020 U.S. App. LEXIS 24457 at 2 (6th Cir. Aug. 3, 2020). The parties must promptly notify the circuit clerk, and "the court of appeals may remand for further proceedings but retains jurisdiction unless it expressly dismisses the appeal." Federal Rule of Appellate Procedure 12.1(b); Id. Therefore, the Court should issue an indicative ruling that it would evaluate the proposed settlement and conduct a fairness hearing pursuant to Rule 23(e)(2).

## II. CONCLUSION

Based on the foregoing, the Parties respectfully request that this Court enter the attached proposed Order indicating that it will accept the limited remand from the Court of Appeals and proceed evaluate the proposed settlement and conduct a fairness hearing.

Respectfully submitted,

/s/ D. Jeffrey Ireland

D. Jeffrey Ireland (0010443)  
FARUKI PLL  
110 North Main Street  
Suite 1600  
Dayton, OH 45402  
Telephone: (937) 227-3710  
Fax: (937) 227-3717  
Email: djireland@ficlaw.com

Brian D. Wright (0075359)  
Jason W. Palmer (0088336)  
FARUKI PLL  
201 East Fifth Street  
Suite 1420  
Cincinnati, OH 45202  
Telephone: (513) 632-0314  
Fax: (513) 632-0319  
Email: bwright@ficlaw.com  
jpalmer@ficlaw.com

Attorneys for Defendant-Appellant  
Nautilus, Inc.

/s/ W.B. Markovits (per email authorization)

W.B. Markovits (0018514)  
Terence R. Coates (0085579)  
Justin C. Walker (080001)  
Zachary C. Schaengold (0090953)  
MARKOVITS, STOCK & DeMARCO, LLC  
3825 Edwards Road, Suite 650  
Cincinnati, OH 45209  
Telephone: (513) 651-3700  
Fax: (513) 665-0219  
bmarkovits@msdlegal.com  
tcoates@msdlegal.com  
jwalker@msdlegal.com  
zschaengold@msdlegal.com

Nathan D. Prosser (*pro hac vice*)  
HELLMUTH & JOHNSON, PLLC  
8050 West 78th Street  
Edina, MN 55439  
Telephone: (952) 941-4005  
Fax: (952) 941-2337  
nprosser@hjlawfirm.com

Bryan L. Bleichner (*pro hac vice*)  
Jeffrey D. Bores (*pro hac vice*)  
CHESTNUT CAMBRONNE, PA  
100 Washington Avenue South, Suite 1700  
Minneapolis, MN 55401  
Telephone: (612) 339-7300  
Fax: (612) 336-2940  
bbleichner@chestnutcambronne.com  
jbores@chestnutcambronne.com

Counsel for Plaintiff, the Class and the Subclass

## **CERTIFICATE OF SERVICE**

I certify that on the 11th day of October, 2021, I electronically filed the foregoing Motion to Remand of Defendant-Appellant Nautilus, Inc. with the Clerk of Courts using the CM/ECF system, which will send notification of such filing to CM/ECF participants, and I hereby certify that I have mailed by United States Postal Service the document to the non-CM/ECF participants:

Terrence R. Coates, Esq.  
W.B. Markovits, Esq.  
Justin Walker, Esq.  
Markovits, Stock & DeMarco, LLC  
3825 Edwards Road  
Suite 650  
Cincinnati, OH 45209  
tcoates@msdlegal.com  
bmarkovits@msdlegal.com  
jwalker@msdlegal.com

Nathan D. Posser, Esq. (Pro Hac Vice)  
HELLMUTH & JOHNSON, PLLC  
8050 West 78th Street  
Edina, MN 55439  
nprosser@hjlawfirm.com

Bryan L. Bleichner, Esq. (Pro Hac Vice)  
Jeffrey D. Bores, Esq. (Pro Hac Vice)  
CHESTNUT CAMBRONNE, PA  
100 Washington Avenue South  
Suite 1700  
Minneapolis, MN 55401  
bbleichner@chestnutcambronne.com  
jbores@chestnutcambronne.com

Jeffrey D. Bores, Esq.  
CHESTNUT CAMBRONNE, PA  
100 Washington Avenue South  
Suite 1700  
Minneapolis, MN 55401

Attorneys for Plaintiff, the Class, and the Subclass

/s/ D. Jeffrey Ireland  
D. Jeffrey Ireland

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